

**P L D 2001 Supreme Court 107**

**Present: Sh. Riaz Ahmed, Rashid Aziz Khan and Iftikhar Muhammad Chaudhry, JJ**

**MUHAMMAD MUSHTAQ---Appellant**

**versus**

**THE STATE---Respondent**

Criminal Appeal No.63 of 1998, decided on 16th October, 2000.

(On appeal from the judgment dated 30-11-1995 of the Lahore High Court, Rawalpindi Bench, Rawalpindi passed in Criminal Appeal No.203 of 1999, Murder Reference No.511 of 1991 and Criminal Revision No. 134 of 1992).

**(a) Penal Code (XLV of 1860)---**

---Ss. 302, 307 & 436---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted by Supreme Court to accused for reappraisal of entire evidence on record in the case.

**(b) Penal Code (XLV of 1860)---**

---Ss. 302, 307 & 436---Appraisal of evidence---Ocular testimony furnished by the complainant and another witness was not impeached even in lengthy cross-examination by the defence and the same was corroborated by medical evidence as well as by the recoveries of eight crime empties from the spot and the licensed gun presented by the accused himself at the police station--Delay in sending the said incriminating articles to the Laboratory for expert opinion could not be treated fatal to the prosecution case in the absence of objection of tampering or manipulating the same---Delay of 16 hours in lodging the F.I.R. had been explained by the complainant in his Court statement; even otherwise in the presence of trustworthy and convincing evidence on the record, delay in making the F.I.R. could be ignored ---Eyewitness although was not named in the F. I. R, yet he was a natural witness to whom no enmity or ulterior motive was attributed for false involvement of accused in the commission of the offence and his deposition was found to be true ---Pendency of case of accused before the Court for a long time did not entitle him for lesser punishment , on the principle of expectancy of life particularly when he himself was responsible for causing such delay---Convictions and sentences of accused were upheld in circumstances.

Muhammad Iqbal v. Muhammad Tahir and others PLD 1985 SC 361; Sikandar and 2 others v. The State PLD 1980 SC 411; Ch. Muhammad Siddique v. Muhammad Zubair and 4 others 1995 SCMR 1112; Khawand Bakhsh and others v. The State and 2 others PLD 2000 SC 1; Sheraz Asghar v. The State 1995 `SCMR 1365; 1986 PCr.LJ 1297 and Rahim Bakhsh v. Abdul Subhan and another 1999 SCMR 1190 ref.

**(c) Penal Code (XLV of 1860)---**

---Ss. 302, 307 & 436---Appreciation of evidence---Delay in sending the incriminating articles to the concerned quarter for expert opinion cannot be treated fatal in absence of objection regarding the same having been tampered with or manipulated.

Muhammad Iqbal v. Muhammad Tahir and others PLD 1985 SC 361 ref.

**(d) Penal Code (XLV of 1860)---**

---Ss. 302, 307 & 436---Appreciation of evidence---Delayed F.I.R.---Delay in lodging of F.I.R. can be ignored in the presence of trustworthy and convincing evidence on record.

Sheraz Asghar v. The State 1995 SCMR 1365 ref.

**(e) Penal Code (XLV of 1860)---**

---Ss. 302, 307 & 436---Medcial evidence---Doctor has no authority in law to express his opinion as to which weapon was used in the commission of the offence.

1986 PCr. LJ 1297 ref.

Raja Muhammad Akram, Advocate Supreme Court and Ijaz Muhammad Khan, Advocate-on-Record for Appellant.

Sardar M. Ishaq Khan, Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for the Complainant.

Ch. M. Akram, Advocate Supreme Court for A.-G., Punjab for the State.

Date of hearing: 16th October, 2000.